

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In Re:	:	Chapter 13
Caroline H. Reinier	:	Case No. <u>15-50463</u>
	:	JUDGE <u>PRESTON</u>
	:	

**MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY
UNSECURED AND VOID**

Now comes Debtor, by and through undersigned counsel, and respectfully moves the Court, pursuant to 11 U.S.C. §§506, 1322(b)(12), 1325(a) and 1327(c), and Federal Rules of Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of State of Ohio – Department of Taxation (the “Creditor”) is wholly unsecured and void.

Support for the Motion is set forth below.

MEMORANDUM IN SUPPORT

1. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on January 29, 2015 (the “Petition Date”).
2. As of the Petition Date, the Debtor was the owner of the following real property located at 2130 Keller Place W, Grove City, OH 43123 (the “Property”). The Debtor owns the Property individually. A legal description of the Property is attached hereto as Exhibit A.
3. The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court as Doc #17, was \$85,000.00.
4. As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:
 - a. First mortgage/lien: Ocwen Loan Servicing L in the amount of \$88,387.00.
The first mortgage/lien was obtained by the mortgagee/lienholder on May 22, 1997. The first mortgage/lien was filed of record on May 30, 1997, in the

Office of the Recorder, Franklin County, Ohio, as Instrument Number
199705300011403.

5. The Creditor's mortgage/lien sought to be avoided is in the amount of \$7,057.67.
The mortgage/lien was obtained by the Creditor on July 31, 2014. This mortgage/lien was filed of record on July 31, 2014, in the Franklin County Court of Common Pleas, as Lien No 14 JG 025611.
6. Value of the property: \$85,000.00
Total amount of all mortgages/liens
Superior to the Creditor's mortgage/lien: \$88,387.00
7. The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§506(a), 1322(b)(12), 1325(a) and 1327(c) and the terms of the Debtor's confirmed plan. *See Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir. 2002).
8. Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.
9. Upon plan completion and discharge, the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the mortgage/lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Courtney A. Cousino
Courtney A. Cousino, Esq (0082136)

Attorney for Debtors
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Columbus, OH 43215
(614) 228-4435
(614) 228-3882 fax
courtney@fesenmyerlaw.com

NOTICE OF MOTION

Notice is hereby given that Debtor has filed the following papers with the Court:
Motion to Avoid.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought, or if you want the Court to consider your views thereon, then on or before twenty-one (21) days from the date of service of this Notice, you or your attorney must:

File with the Court a written request for a hearing along with a written response or an answer explaining your position. This pleading must be filed at Clerk of Courts, United States Bankruptcy Court, 170 N. High Street, Columbus, Ohio 43215. If you mail your request and response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above. The Court will send out a Notice of hearing. You must also mail a copy to:

Courtney A. Cousino, Esq
Fesenmyer Law Offices, LLC
1335 Dublin Road, Suite 205C
Columbus, Ohio 43215

Office of the U.S. Trustee
170 N. High Street, #200
Columbus, Ohio 43215

Frank M. Pees - Chapter 13 Trustee
130 E. Wilson Bridge Road, Suite 200
Worthington, OH 43085

Caroline H. Reinier
2130 Keller Place W
Grove City, OH 43123

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief pursuant to the provisions of Local Bankruptcy Rule 9013.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed to the following parties whose names and addresses are set forth below by electronic and/or U.S. mail, postage prepaid, on April 14, 2015.

By Electronic Notification to the following:

- Asst US Trustee (Col) ustpreion09.cb.ecf@usdoj.gov
- Brian M Gianangeli bgianangeli@mifsudlaw.com
- Frank M Pees trustee@ch13.org
- David H Yunghans ohbk@rslegal.com,
rsbkecfbackup@gmail.com;reisenfeld@ecf.inforuptcy.com

By first class postage prepaid regular U.S. Mail to the following:

Debtors:

Caroline H. Reinier
2130 Keller Place W
Grove City, OH 43123

Creditors:

State of Ohio, Department of Taxation
P.O. Box 182401
Columbus OH 43218

Perez & Morris LLC
8000 Ravine's Edge Court, Suite 300
Columbus, OH 43235

Attorney General of the State of Ohio
Collection Enforcement
150 E. Gay St., 21st floor
Columbus, OH 43215

Ohio Department of Taxation
Bankruptcy Department
Attn: Rebecca Daum
P.O. Box 530
Columbus, OH 43216

/s/ Courtney A. Cousino
Courtney A. Cousino (0082136)
Attorney for Debtor
1335 Dublin Road, Suite 205C
Columbus, OH 43215
(614) 228-4435
(614) 228-3882 fax
e-mail: courtney@fesenmyerlaw.com

EXHIBIT "A"
LEGAL DESCRIPTION

Situated in the State of Ohio, County of Franklin and City of Columbus:

Being Lot Number One Hundred Thirty-seven (137), Stoneridge No. 1, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 45, page 13, Recorder's Office, Franklin County, Ohio.

Parcel No. 570-160205

Also known as: 2130 Keller Place West, Grove City, OH 43123